Supreme Court, U.S.
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No. 09-___

IN THE

Supreme Court of the United States

FORREST J. SAFFO and
SALLIE M. SAFFO,
Petitioners,

v.

FOXWORTHY, INC. and
CHARLES L. WILSON, III,
Respondents.

On Petition for a Writ of Certiorari to the Georgia Supreme Court

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PETITION FOR A WRIT OF CERTIORARI

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March 15, 2010

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QUESTION PRESENTED

1. Whether a statute that requires two eighty year old homeowners to pay more than $112,000 as a condition precedent to continuing their lawsuit challenging the validity of the taxation, tax execution, levy, and sale of their residence for alleged non-payment of property taxes violates the due process clause of the Fourteenth Amendment.

2. Whether the Georgia Supreme Court's construction of property tax collection statutes providing that the sheriff "shall" provide certain notices to a property owner leading up to or following a tax sale as being merely "directory" instead of "mandatory" violates the due process clause of the Fourteenth Amendment.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	v
OPINION BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF FACTS	2
REASONS FOR GRANTING PETITION	8
I. GEORGIA'S STATUTES REQUIRING HOMEOWNERS TO PAY MORE THAN $112,000 AS A CONDITION PRECEDENT TO CONTINUING THEIR LAWSUIT CHALLENGING THE VALIDITY OF THE TAX ASSESSMENT, ISSUANCE OF TAX EXECUTION, LEVY AND SALE OF THEIR RESIDENCE FOR ALLEGED NONPAYMENT OF PROPERTY TAXES VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT [1]	8

[1] Pursuant to U.S. Supreme Court Rule 29(4)(c), Petitioner hereby notifies the Court that 28 U.S.C. §2403(b) may apply and that the Attorney General for the State of Georgia will continue to be included on the certificate of service (as they have with earlier briefs filed in proceedings below).

TABLE OF CONTENTS—Continued

Page

II. THE GEORGIA SUPREME COURT'S CONSTRUCTION OF PROPERTY TAX COLLECTION STATUTES PROVIDING THAT THE SHERIFF "SHALL" PROVIDE CERTAIN NOTICES TO A PROPERTY OWNER LEADING UP TO OR FOLLOWING A TAX SALE AS BEING MERELY "DIRECTORY" INSTEAD OF "MANDATORY" VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT 11

CONCLUSION 17

APPENDIX

APPENDIX A: Saffo v. Foxworthy, Inc., 286 Ga. 284 (2009) 1a

APPENDIX B: Trial Court Order Filed October 14, 2008 ..... 14a

APPENDIX C: Trial Court Order Filed May 27, 2008 ..... 16a

APPENDIX D: Trial Court Order Filed February 25, 2008 ..... 17a

APPENDIX E: State of Georgia's Statutory Scheme - Selected Statutes 19a

TABLE OF AUTHORITIES

FEDERAL CASES — Page

French v. Edwards, 80 U.S. 506(1871) 12
Jones v. Flowers, 547 U.S. 220(2006) 6
Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983) 11
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950) 6
Peralta v. Heights Med. Ctr., Inc., 485 U.S. 80 (1988) 9
Thatcher v. Powell, 19 U.S. 119 (1821) 12
Zinermon v. Burch, 494 U.S. 113 (1990) 15, 16

STATE OF GEORGIA CASES

Barlow v. Orkin Exterminating Co., Inc., 196 Ga. App. 822 (1990) 2
G.E. Capital Mtg. Svcs. v. Clack, 271 Ga. 82 (1999) 12
Harper v. Foxworthy, 254 Ga. App. 495 (2002) 5, 12, 13
Saffo v. Foxworthy, Inc., 286 Ga. 284 (2009) 1
Wallace v. President Street, L.P., 263 Ga. 239 (1993) 6

U.S. CONSTITUTION

U.S. Constitution, Amendment I 8
U.S. Constitution, Amendment XIV, Section 1 8

TABLE OF AUTHORITIES—Continued

FEDERAL STATUTES — Page

28 U. S. C. § 1257(a) 2
28 U. S. C. § 2403(b) iii

STATE OF GEORGIA STATUTES

O.C.G.A. § 15-16-54 14
O.C.G.A. § 16-10-23 14
O.C.G.A. § 48-3-9 13
O.C.G.A. § 48-4-1 13
O.C.G.A. § 48-4-45 4
O.C.G.A. § 48-4-46 5
O.C.G.A. § 48-4-47 ..... 5, 7, 8, 9

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OPINION BELOW

The decision of the Georgia Supreme Court has been published in the official reporters as *Saffo v. Foxworthy, Inc.*, 286 Ga. 284 (2009) (J. Benham and J. Hunstein writing a separate concurrence) and the amended decision and denial of Petitioners' timely motion for reconsideration as published by that Court is included in **Appendix A** at 1a-13a. The orders of the trial court (Fulton County Superior Court) in which, inter alia, summary judgment was granted to Respondents on their quiet title counterclaim following a tax sale are included in **Appendix A** at 14a-18a.

JURISDICTION

The Georgia Supreme Court filed its initial decision on November 23, 2009. Petitioners timely filed a motion for reconsideration which was denied on December 15, 2009. This Court has jurisdiction under 28 U. S. C. § 1257(a) to review the Georgia Supreme Court's decision on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Georgia's relevant statutory provisions relating to the assessment and collection of taxes and the duties of the sheriffs in relation thereto are included in **Appendix B**. Applicable constitutional provisions or amendments are included in the body of this petition.

STATEMENT OF FACTS [1]

Reverend and Mrs. Saffo, both close to 80 years old, have been married for over 55 years. Until his recent retirement, Reverend Saffo was the pastor of New Mountaintop Baptist Church in Douglas County, Georgia. Since 1983, the Saffos owned and lived in the property located at 685 Chickadee Court, SW, Atlanta, Fulton County, Georgia (the "Home") where they raised their children and planned to remain for the rest of their lives.

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[1] Because the rulings being reviewed included an order granting the Respondents' motion for summary judgment and dismissing the Saffos' claims, all doubts as to the evidence and the benefit of any conflicts were to be resolved in favor of the Saffos and construed against Respondents/movants and when presented with a choice of inferences to be drawn from the facts, all inferences of fact had to be drawn against the Respondents/movants and in favor of the Saffos. *See, e.g. Barlow v. Orkin Exterminating Co., Inc.*, 196 Ga. App. 822, 823 (1990).

Unbeknownst to Reverend and Mrs. Saffos–they received no prior notice or process of any type–their home was taken from them in a tax sale in February, 2000. They purportedly owed roughly $2,300 in taxes; their home was purchased by Foxworthy, Inc., at the tax sale for $51,000. Foxworthy is one of several companies in Georgia whose business it is to seek to profit by purchasing properties at tax sales for far less than their fair market value. Respondent Wilson is Foxworthy's day-to-day manager.

It was not until roughly a year later, in February 2001, that the Saffos first learned that the Home was no longer listed in their names. Reverend Saffo subsequently spoke with Wilson who claimed that Foxworthy had acquired the Home at a tax sale and they discussed "how [the Saffos] could get it back" by paying some substantial amount of money. The Saffos went to a bank to obtain the money to satisfy Foxworthy's demands, however, they were told that they could not borrow money on property they did not own. Unable to meet Foxworthy's demands, the Saffos did not follow up, but neither did Foxworthy.

In or about February 2004, the Saffos were served by a sheriff with eviction papers whereupon they contacted Wilson who threatened to proceed with eviction unless the Saffos paid Foxworthy close to $100,000.

Faced with Foxworthy's threats and demands for payment, in July 2004, the Saffos filed a suit seeking, among other things: (a) an injunction barring Foxworthy from making further threats or instituting dispossessory proceedings; and (b) recovery of damages for, among other things, the interference with their rights to quiet and peaceful enjoyment of the

Home. In their Complaint, the Saffos did not seek to quiet title to their Home or to set aside, cancel, or in any way invalidate the alleged tax deed. Rather, Foxworthy sought to quiet title in its counterclaim arguing that "[t]he right of redemption pursuant to O.C.G.A. § 48-4-45 et seq. has been barred by virtue of notices given and served to the Plaintiffs."

According to Foxworthy, it paid $51,406.88 to purchase the Saffos' home at a tax sale purportedly conducted on February 1, 2000 for the purposes of collecting $2,270.31 in allegedly delinquent property taxes. Prior to being contacted by Foxworthy in 2004, the Saffos never received notice that: (1) tax bills had been issued; (2) tax bills were due; (3) a fifa would be issued if taxes were not paid by a date certain; (4) a fifa had been issued; (5) unless paid, the fifa would be transferred to a third party (a private for-profit enterprise); (6) any fifas had, indeed, been transferred to a third party; (7) the sheriff had levied on the Home; or (8) their Home would be sold at a tax sale.

Foxworthy produced no evidence that any of foregoing notices had been sent, given, or delivered to the Saffos, nor did it produce any evidence that the Saffos had received any of the foregoing notices. Instead, Foxworthy relied on the sheriff's purported recitations in the tax deed and presumptions arising therefrom.

On September 20, 2004, the Foxworthy parties filed their motion to dismiss claiming they had complied with Georgia law in barring the Plaintiffs' right to redeem the property and arguing that the Saffos could not challenge the alleged tax sale because they had not tendered the redemption price before bringing this action. The Saffos, having been unaware of any tax sale, insisted on strict proof that a proper

sale took place and that all conditions precedent to such a sale had been satisfied. The Saffos also denied that they had received any notices of the barment of their rights of redemption. The Saffos also raised and argued in their briefs filed in the state trial and appellate courts their position that the Georgia statutory scheme, both as enacted and as applied, violated rights guaranteed to them by the United States Constitution and its amendments.

Even if the notice of barment had been properly served as alleged by Respondents (and disputed by the Saffos), Respondents' documents showed that the Saffos were not given the minimum amount of time to redeem the Home as provided in O.C.G.A. § 48-4-46(b). In November 2004, apparently concerned that it had not properly barred the Saffos' right of redemption prior to filing eviction proceedings and demanding close to $100,000, Foxworthy served the Saffos with a notice purporting to bar their right of redemption unless payment of more than $110,000 was paid within thirty days.

In its order which, *inter alia*, granted Respondents' motion for summary judgment, the trial court concluded that: (1) "Plaintiffs did not tender the full redemption amount prior to filing the suit, pursuant to O.C.G.A. § 48-4-47(a);" (2) the Saffos' right to redeem their Home "is now barred;" (3) "to the extent that Plaintiffs argue that the tax sale must be invalidated because the Sheriff did not comply with the statutory notice requirements, Plaintiffs' remedy would be as against the Sheriff, rather than the purchasers. *Harper v. Foxworthy*, 254 Ga. App. 495, 498 (2002);" and (4) the Saffos produced no evidence that the purchaser engaged in "collusion or fraud."

The Georgia Supreme Court affirmed on essentially the same grounds as the trial court, concluding in essence that, because the Saffos had not paid the redemption price of more than $112,000, they could not challenge the validity of the assessment of the tax, the tax lien judgment or writ of execution, the transfer of the tax lien, the levy, or the tax sale, itself. As for the Saffos' challenges to the Georgia statutory scheme based on the United States Constitution, the Georgia appellate court relied on *Jones v. Flowers*, 547 U.S. 220, 223 (2006) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) to conclude that "[d]ue process does not require that a property owner receive actual notice before the government may take his property" . . . all that is required is that "the government provide notice reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections." (Citations and quotations omitted).

In his concurring opinion (in which he was joined by Justice Hunstein), Judge Benham noted as follows:

> [T]he enforcement and collection of taxes through the sale of the taxpayer's property has been regarded as a harsh procedure, and, therefore, the policy has been to favor the rights of the property owner in the interpretation of such laws." (Citation and punctuation omitted.) *Wallace v. President Street, L.P.*, 263 Ga. 239 (1) (430 SE2d 1) (1993). **While I find the majority's legal analysis to be sound under the current state of the law, I write because I nevertheless believe the result to be harsh and not in keeping with protecting homeowners'**

> **rights. Particularly problematic is OCGA § 48-4-47 (a), which requires the homeowner to pay the full redemption price as a condition to maintaining a suit over the validity of the tax sale. This requirement places an onerous burden on persons trying to save their homes. A small tax delinquency can quickly balloon into a substantially greater amount depending on the bid made on the courthouse steps**. In this case, even if appellants had moved more quickly to redeem and had reacted before the redemption fee was compounded over time by interest and penalties, under our present non judicial tax sale scheme, which does not allow for any consideration of hardship or ability to pay, appellants still had almost no chance to redeem their property after the tax sale occurred. **That seems patently unfair, especially given the current economic environment.** I recognize, however, that this is an issue only the legislature may address, and so I reluctantly concur with the judgment.

Appendix A, at 12a.

REASONS FOR GRANTING THIS PETITION

I. GEORGIA'S STATUTES REQUIRING HOMEOWNERS TO PAY MORE THAN $112,000 AS A CONDITION PRECEDENT TO CONTINUING THEIR LAWSUIT CHALLENGING THE VALIDITY OF THE TAX ASSESSMENT, ISSUANCE OF TAX EXECUTION, LEVY AND SALE OF THEIR RESIDENCE FOR ALLEGED NON-PAYMENT OF PROPERTY TAXES VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amendment XIV, Section 1. One of the privileges and immunities to which the Saffos are entitled as citizens is the right to petition the Government for a redress of grievances." U.S. Constitution, Amendment I.

Despite the safety provided by these fundamental rights, the court below applied O.C.G.A. § 48-4-47 to bar the Saffos from appearing in court and maintaining an action to protect their home. The court below held that because the Saffos did not (indeed, the court acknowledges that they could not) pay the sum of $112,000–the full redemption price for their $2,300 tax debt–they could no longer pursue their challenge to the taking of their home *even though they never received any prior notice of the tax sale.* The Georgia Supreme Court seemed to agree that the Saffos' right

of redemption had not been barred prior to the filing of their suit, but nonetheless it allowed Foxworthy's post-lawsuit service of a purported "second" notice of barment to trigger the Saffos' obligation to pay the extraordinary sum or lose their right to attack the very tax sale giving rise to Foxworthy's demand for over $100,000–a tax sale of which they had no knowledge or notice.

The Georgia Supreme Court held that O.C.G.A. § 48-4-47 does not violate the Saffos' constitutional rights "simply because, in effect, it prevents them and others unwilling or unable to pay or tender the redemption amount from forcing the taxing authority, the new owner, and the trial court to engage in an apparent exercise in futility where, at the end of the day, they will still be in a position where they cannot retain their property." Appendix A at 10a. The appellate court's logic is flawed and troubling.

Most significantly, the decision below is irreconcilable with this Court's decision in *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 84-87 (1988). This Court held that Texas could not condition relief from a judgment obtained without personal jurisdiction upon the showing of a meritorious defense to the underlying claim. Georgia's statutory scheme is different from Texas' only in that it is even worse: rather than merely articulate a defense to maintain your day in court, Georgia requires that one whose property has been taken without due process post the entire redemption price as a prerequisite to challenging the unlawful taking. For this reason alone, this Court should grant certiorari to ensure that the Georgia Supreme Court follows and fully complies with the precedent of this Court.

Moreover, even if all steps leading up to and including the tax sale were properly performed (and they were not), if Foxworthy claimed ownership of and the right to evict the Saffos from their Home prior to having properly barred their right of redemption, the Saffos would be entitled to damages for the interference with their right to quiet enjoyment of their Home and, potentially to compensatory and exemplary damages for intentional infliction of emotional distress. The Saffos would be allowed to offset any such damages they would recover on these and other claims against amounts claimed to be owing by Foxworthy for redemption.

The Georgia court's logic also ignores the Saffos' undisputed testimony and evidence coupled with Foxworthy's abject failure to produce any evidence on the issues of whether: (a) the taxes were properly assessed, (b) the tax execution properly issued and transferred to a third party; (c) there was a lawful levy; (d) the notices of the tax sale were properly given; and (e) a valid tax sale was conducted. To suggest that allowing the Saffos to defend on such grounds would be "an exercise in futility" and that "at the end of the day, they will still be in position where they cannot retain their property" seems horribly unfair. This is especially so, because contrary to the appellate court's conclusion and as shown below, Georgia is prohibited from relegating the Saffos to a suit against the sheriff as a substitute for their property rights in and to their Home.

The Georgia Supreme Court's ruling ignores the Saffos' rights to due process of law and the binding precedents of this Court. This Court must, accordingly, grant certiorari and reverse the decision of the court below.

II. THE GEORGIA SUPREME COURT'S CONSTRUCTION OF PROPERTY TAX COLLECTION STATUTES PROVIDING THAT THE SHERIFF "SHALL" PROVIDE CERTAIN NOTICES TO A PROPERTY OWNER LEADING UP TO OR FOLLOWING A TAX SALE AS BEING MERELY "DIRECTORY" INSTEAD OF "MANDATORY" VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

"Due process, in the context of a tax sale, also requires that 'a State must provide notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983)." The Saffos learned about the alleged tax sale of their home only after their title had been surreptitiously transferred to Foxworthy and it was demanding more than $50,000 as a condition for the Saffos being able to continue living in their Home. The Saffos simply did not receive the notices that are mandated by law to be sent prior to a tax sale. Due process is not just about laws on the books. As *Mennonite Bd. of Missions* suggests, due process is not an abstraction, but requires notice in fact.

In arriving at its "exercise in futility" conclusion, the Georgia Supreme Court made short shrift of the undisputed testimony from the Saffos' establishing the failure of all of the conditions precedent to a lawful and valid tax sale, holding that "to the extent the Saffos complain of alleged defects in the Sheriff's implementation of the tax sale process, their remedy is a suit against the Sheriff, not a suit against the

property's new owner or its manager." (*Citing*, *inter alia*, *G.E. Capital Mtg. Svcs. v. Clack*, 271 Ga. 82, 83 (1999). Notably, the trial court had also relied on *Harper v. Foxworthy, Inc.*, 254 Ga. App. 495, 498 (2002) for this same proposition.

In a property tax case that turned on the validity of the tax deed, this Court addressed the question of when a sheriff's duties are directory or mandatory and concluded that:

> when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise.

French v. Edwards, 80 U.S. 506, 511(1871). *See also, Thatcher v. Powell*, 19 U.S. 119, 127 (1821) ("In summary proceedings where a court exercises an extraordinary power under a special statute prescribing its course, we think that course ought to be exactly observed, and those facts especially which give jurisdiction ought to appear in order to show that its proceedings are coram judice. Without this act of assembly, the order for sale would have been totally void. This act gives the power only on a report to be made by the sheriff. This report gives the court jurisdiction, and without it the court is as powerless as if the act had never passed.")

In *French v. Edwards*, this Court also held that "[p]resumptions are not indulged to sustain irregular proceedings . . . when the irregularity is manifest.

Presumptions are indulged to supply the place of that which is not apparent, not to give a new character to that which is seen to be defective." *Id.* 80 U.S. at 515.

As for whether there were any irregularities in Fulton County tax sales, one need only look at another Georgia appellate court decision (cited by the trial court in its order), in which Foxworthy (Respondent here) was the beneficiary of a decision which noted the following:

> 1. A Vesta Holdings[2] employee testified that it was the company's practice to prepare and send out, on the Fulton County Sheriff's behalf, 20 day notices of intention to levy required to be sent by certified mail pursuant to O.C.G.A. § 48-3-9(a) [*Harper v. Foxworthy, Inc.*, 254 Ga. App. at 497);
>
> 2. Vesta Holdings purported to hire private persons to perform the Fulton County sheriff's duties to personally serve the taxpayer with notice [*id.*];
>
> 3. Vesta Holdings purported to perform, on behalf of the Fulton County sheriff, the duties to publish the notice of the sale in the Fulton County Daily Report pursuant to O.C.G.A. § 48-4-1(a) [*id.*]; and
>
> 4. Vesta Holdings purported to prepare and send out, on the Fulton County Sheriff's behalf, 10 day notices of the impending sale as required by O.C.G.A. § 48-4-1(a) [*id.*].

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[2] Vesta Holdings is a somewhat amorphous amalgamation of private third party individuals and entities which have dominated the privatized collections of taxes in and around metro-Atlanta and Fulton County, Georgia.

Far from being entitled to "presumptions of regularity" Vesta Holdings' purported actions on behalf of the Fulton County Sheriff's office would appear to be a violation of the Sheriff's Nomenclature Act, and specifically O.C.G.A. § 15-16-54. It also raises substantial questions as to whether Vesta or its agents may have committed a crime under O.C.G.A. § 16-10-23 ("A person who falsely holds himself out as a peace officer or other public officer or employee with intent to mislead another into believing that he is actually such officer commits the offense of impersonating an officer and, upon conviction thereof, shall be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both.")

Notably, the facts cited above by the Georgia Court of Appeals were found in a the bench trial that took place in May, 2001. Thus, in 2004, when it was purporting to bar the Saffos' right to redeem, Foxworthy and its attorneys knew full well that tax deeds purportedly signed by the Fulton County Sheriff were not entitled to any presumptions. Indeed, the attempt by Foxworthy to cloak itself with bona fide purchaser status, and to also seek the benefit of the "presumption of regularity" in the performance of the Fulton County Sheriff's duties is (charitably put) unfounded.

Here, as the Georgia Court of Appeals noted in *Harper v. Foxworthy*, the giving of notice was delegated (unlawfully the Saffos contend) to Vesta Holdings, a private third party which was self-interested in not providing effective notice. While these circumstances may not, in and of themselves, be enough to violate due process, by such unlawful delegation, the county had fair warning that statu-

tory notice requirements may well be neglected. This state of affairs also weakens any argument that a post-deprivation remedy is sufficient. In this known conflict situation, the authorities cannot claim that the Saffos' lack of notice was either "unpredictable" or "unauthorized." *Zinermon v. Burch*, 494 U.S. 113, 136-38 (1990).

According to the Georgia Supreme Court, in order to even be heard, the Saffos must first pay not only the tax amount, but the accumulated interest and penalties on the sales price. Of course, calculating the penalties and interest on the sales price is arbitrary and has no correlation with the original amount of taxes owed. Instead, the prohibitive redemption amount appears to be designed only to allow further profit to the private acquirer (transferee) of the tax lien and the private tax sale purchaser and its successors. Allowing this profit to prohibit a meaningful opportunity to be heard violates procedural due process because it effectively extinguishes the opportunity to be heard at the last step of the tax foreclosure process. Significantly, the requirement of tender under these circumstances prohibits a judicial hearing from ever taking place. Indeed, under these circumstances, private parties with a pecuniary interest run the entire process from beginning to end, and the landowner never receives an opportunity to be heard by a neutral public official. Thus, the right to redemption is illusory because the substantial penalty based upon the sales price is punitive and serves no governmental purpose other to enrich a private party.

The Saffos' entire equity in the home will be extinguished simply because they cannot come up with a

redemption price that is over 60 times the original taxes allegedly due[4] before the tax lien was sold.

The Georgia Supreme Court ruled that if the Saffos did not receive notice, the remedy is to sue the sheriff for damages. Citing *Harper v. Foxworthy, Inc., supra*. As shown above, *Harper* does not control. Even if it did, such a post-deprivation remedy is no answer. *Mennonite Bd. of Missions* holds that due process requires pre-deprivation notice when interests in real property are threatened. Whatever Georgia statutory law has to say on this point, as a matter of constitutional due process, a later remedy does not substitute for notice designed to protect against loss in the first place. Only in rare situations, none presented here, does a potential after-the-fact remedy satisfy due process requirements. *Zinermon v. Burch*, 494 U.S. 113 (1990).

Declaring as merely "directory" instead of "mandatory" the duties of a sheriff relating to a tax sale of a citizen's home makes a mockery of the Constitution of the United States and its amendments and of this Court's binding precedents.

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[4] The Saffos do not concede that the taxes were due. Indeed, no taxes could be due if the Tax Commissioner failed to provide any notice of assessment or to perfect the right to file a tax execution and transfer that lien to a third party for collection.

CONCLUSION

The Saffos respectfully submit that the Court should grant this petition for a writ of certiorari, reverse the decision of the Georgia Supreme Court and remand this case for entry of a judgment consistent with the U.S. Constitution and this Court's precedents cited herein.

Respectfully submitted,

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APPENDIX TABLE OF CONTENTS

	Page
APPENDIX A: Saffo v. Foxworthy, Inc., 286 Ga. 284 (2009)	1a
APPENDIX B: Trial Court Order Filed October 14, 2008	14a
APPENDIX C: Trial Court Order Filed May 27, 2008	16a
APPENDIX D: Trial Court Order Filed February 25, 2008	17a
APPENDIX E: State of Georgia's Statutory Scheme - Selected Statutes	19a

APPENDIX A

SUPREME COURT OF GEORGIA

S09A0988

SAFFO *et al.*

v.

FOXWORTHY, INC. *et al.*

NAHMIAS, *Justice*.

The appellants contend the trial court erred in relying on OCGA § 48-4-47 to dismiss their complaint against the appellees to recover property sold at a tax sale to satisfy unpaid property taxes. OCGA § 48-4-47 provides that once the right of redemption has been foreclosed by the providing of notice to the delinquent taxpayer and the passing of the barment date, the delinquent taxpayer cannot file or maintain suit to invalidate the tax deed without first paying or tendering to the new owner the full redemption amount, which includes the price paid for the property at the tax sale plus taxes, costs, and penalties that escalate with each passing year. The appellants, who are delinquent taxpayers, did not pay or tender the redemption amount before or after filing suit against the new owner to challenge the validity of the tax sale of their residence and the resulting tax deed. The appellants argue that the trial court nevertheless erred in dismissing their complaint, because an exception to the statutory payment or tender requirement applies and because the payment or tender requirement of OCGA § 48-4-47 violates their constitutional due process rights. We reject those arguments and affirm.

1. The delinquent taxpayers, appellants Sallie M. Saffo and her husband, Forrest J. Saffo, purchased the property at issue in 1983. For the next seven years, the property taxes were paid out of an escrow account connected with the mortgage. The Saffos knew that they had to pay property taxes and knew that the taxes were no longer being paid from the escrow account after 1990. Nevertheless, from 1991 on, the Saffos did not pay property taxes. A tax lien attached to the property, which was later foreclosed, and on February 1, 2000, the Fulton County Sheriff sold the property at a tax sale to the highest bidder, appellee Foxworthy, Inc., for $51,406.88.

Under OCGA § 48-4-40 (1), the Saffos had an initial period of 12 months, until February 1, 2001, to redeem the property by paying the redemption amount to Foxworthy. They failed to do so. On February 8, 2001, shortly after the expiration of the initial redemption period, Mr. Saffo met with Foxworthy's day-to-day manager, appellee Charles L. Wilson III, to ask about redeeming the property. Although the initial 12-month redemption period had expired, the Saffos could still redeem the property by paying Foxworthy the redemption amount because Foxworthy had not yet served notice of foreclosure of the right of redemption. Wilson explained the redemption requirements to Mr. Saffo, but the Saffos again did not redeem the property.

A little more than a year later, on May 21, 2002, Foxworthy had the Sheriff serve the Saffos with a Notice of Foreclosure of Equity of Redemption by personally serving Mr. Saffo at the property. The notice set a barment date of June 20, 2002, and informed the Saffos that the right of redemption would expire and be forever barred on that date.

Notice was also given by publication. A year and a half later, the Saffos still had not paid Foxworthy the redemption amount, which by that point had increased to $112,516, and Foxworthy began demanding possession of the premises.

From February through April 2004, Foxworthy and the Saffos unsuccessfully negotiated to resolve the matter. In June 2004, Foxworthy sent the Saffos a formal demand for possession by July 1, 2004. On that date, instead of vacating the property, the Saffos filed suit against Foxworthy and Wilson in the Fulton County Superior Court, alleging various tort claims and seeking injunctive relief to prevent their removal from the residence. Foxworthy answered and counterclaimed to quiet title to the property and to recover damages for conversion and trespass by the Saffos. Wilson answered as well.

In light of the Saffos' allegations of inadequate notice in 2002, Foxworthy served the Saffos with a second Notice of Foreclosure of Equity of Redemption on November 4, 2004. The barment date specified in the notice was December 28, 2004. Once again, the Saffos failed to redeem the property.

On October 3, 2008, the trial court conducted a hearing on the parties' cross-motions to dismiss and for summary judgment. On October 14, 2008, the court entered an order finding that the Saffos' right to redeem the property was permanently barred because the Saffos had not paid or tendered the redemption amount. The court further held that, to the extent the Saffos were arguing that the tax sale must be invalidated because the Sheriff did not comply with the statutory tax sale requirements, their remedy would be an action against the Sheriff, not Foxworthy and Wilson. Accordingly, the trial court granted

Foxworthy and Wilson's motions to dismiss the complaint and for summary judgment, denied the Saffos' motions to dismiss the counterclaim and for partial summary judgment, and reiterated an earlier order referring Foxworthy's counterclaim to a special master for a report and recommendation. The Saffos appealed.[1]

2. The Saffos raise two claims on appeal. First, they argue that the trial court erred in holding that OCGA § 48-4-47 bars their suit challenging the validity of the tax sale and resulting tax deed to Foxworthy. Second, they contend that OCGA § 48-4-47 violates their constitutional right to due process of law. Before addressing the Saffos' specific claims, a review of the relevant statutory scheme is in order.

The article of the Georgia Code governing redemption of property following a tax sale to satisfy unpaid taxes consists of OCGA §§ 48-4-40 to 48-4-48. Following a tax sale, the delinquent taxpayer has the right to redeem the property by paying the amount required for redemption, the redemption price. See OCGA § 48-4-40. The redemption price is the amount paid for the property at the tax sale, as reflected in the tax deed, plus certain other taxes, costs, and penalties that increase as time passes. See OCGA § 48-4-42; *Mark Turner Properties, Inc. v. Evans*, 274 Ga. 547, 550 (554 SE2d 492) (2001). The effect of redeeming the property is to place title back in the hands of the delinquent taxpayer, see OCGA § 48-4-43, with the tax delinquency resolved.

The delinquent taxpayer has an initial period of 12 months from the date of the tax sale in which to

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[1] We hereby deny the motion filed by Foxworthy and Wilson to dismiss the appeal.

redeem the property. See OCGA § 48-4-40 (1). At the expiration of the 12-month period, the new owner has the ability to terminate and forever bar the delinquent taxpayer's right of redemption by setting a barment date and causing a notice of foreclosure to be served 30 days prior to the barment date. See OCGA § 48-4-46 (b); *Dixon v. Conway*, 262 Ga. 709, 709 (425 SE2d 651) (1993). The notice of foreclosure must be served on the delinquent taxpayer, any occupant of the property, and all holders of any right, title, or interest in, or lien on, the property. See OCGA § 48-4-45 (a) (1) (A)-(C). For tax sales on or after July 1, 1989, the notice of foreclosure must also be published. See OCGA § 48-4-45 (a) (3). The form of the notice is statutorily prescribed. See OCGA § 48-4-46 (a). Service by the Sheriff must be made personally, if possible, and by publication otherwise, but leaving a copy of the notice at the residence of any person required to be served is sufficient. See OCGA § 48-4-46 (b), (c).

Service of the notice of foreclosure of the right of redemption bars the filing or continuance of any action to set aside, cancel, or in any way invalidate the tax deed referred to in the notice or the title conveyed by the tax deed, unless the plaintiff first pays or tenders the full redemption amount. See OCGA § 48-4-47 (a). The Code provides only two exceptions to the payment or tender requirement: (1) where it clearly appears that the unpaid taxes which triggered the tax sale were not actually due at the time of the tax sale; and (2) where it clearly appears that "[s]ervice or notice was not given as required in this article." See OCGA § 48-4-47 (b) (1), (2). With this background, we turn to the Saffos' two claims.

3. The Saffos contend the trial court erred in applying OCGA § 48-4-47 to bar their lawsuit chal-

lenging the tax sale and resulting tax deed to Foxworthy because they were not given timely notice of foreclosure of the right of redemption. The Saffos focus on the service date of May 21, 2002, reflected in the first Notice of Foreclosure of Equity of Redemption. Thirty days after the notice was served would be June 20, 2002. As the Saffos correctly note, the first notice states that "[t]he right to redeem the within and foregoing described property will expire and be forever barred *on and after* June 20, 2002," and later says that "[t]he subject property may be redeemed at any time *before* June 20, 2002, by payment of the redemption price as fixed and provided for by law." (Emphasis supplied.) See OCGA § 48-4-46. Thus, the Saffos argue that the second exception to the payment or tender requirement of OCGA § 48-4-47 applies, because it clearly appears that "[s]ervice or notice [of foreclosure of the right of redemption] was not given as required in this article." OCGA § 48-4-47 (b).

We need not decide if this issue rendered the first notice inadequate even where no effort was made to redeem the property for many months after service. That is because the Saffos concede, as they must, that after they filed this lawsuit, Foxworthy caused a *second* Notice of Foreclosure of Equity of Redemption to be served on them on November 4, 2004, which specified a barment date of December 28, 2004. The Saffos clearly received much more than the requisite 30 days' notice, and OCGA § 48-4-47 (a) bars not only the "fil[ing]" of a suit to set aside a tax deed without payment or tender of the redemption amount, but also "maintain[ing]" such a suit. It is undisputed that the Saffos never paid or tendered the redemption amount. Accordingly, the trial court did not err in dismissing the Saffos' complaint for failing to pay or

tender the redemption amount as required by OCGA § 48-4-47.

4. The Saffos note that in this case, the redemption amount of $112,516 dwarfs the original $2,000 in unpaid taxes the property was sold to satisfy, and it was more than double what Foxworthy paid for the property at the tax sale in 2000 due to the addition of taxes, costs, and penalties, see OCGA § 48-4-42. They claim that requiring them to pay or tender this large sum in order to challenge the tax sale effectively deprived them of notice and an opportunity to be heard by a judicial officer before the taking of their property, in violation of their constitutional right to due process of law,[2] particularly because they allegedly were not given *actual* notice of the 2000 tax sale until after it took place. See *Jones v. Flowers*, 547 U. S. 220, 223 (126 SC 1708, 164 LE2d 415) (2006) ("Before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner notice and opportunity for hearing appropriate to the nature of the case.") (citation and punctuation omitted). As the Saffos put it in their opening brief on appeal:

> If the tender of such a punitive redemption price is required before a landowner can ever be heard, then the entire tax sales process on its face, and as applied in Fulton County, is unconstitutional because it never allows for an adequate or

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[2] See U. S. Const. Amend. XIV, Sec. I ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."); Ga. Const. Art. I, Sec. I, Par. I ("No person shall be deprived of life, liberty, or property except by due process of law.").

meaningful opportunity to be heard either before or after the property is sold.

The Saffos are simply incorrect in claiming that due process requires that they be given "actual notice" before their property can be taken. As the United States Supreme Court has clearly explained, "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *Jones*, 547 U. S. at 226. Instead, what due process requires is that the government "provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones*, 547 U. S. at 226 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (70 SC 652, 94 LE 865) (1950)).

Georgia's statutory scheme requires that notice of foreclosure of the right of redemption be personally served, if possible, on the delinquent taxpayer, any occupant of the property, and anyone else with an interest of record in the property, as well as by publication. See OCGA § 48-4-45 (a) (1), (3). Notice by personal service certainly satisfies the requirements of due process, and the statutory scheme is not unconstitutional on its face.

The Saffos' as-applied challenge is equally unpersuasive. At the very latest, the Saffos had actual notice by February 8, 2001, when Mr. Saffo met with Wilson, that they would lose their property if they did not redeem it. The Saffos' assertion that they were required, in 2004, to come up with $112,516 "at the last possible moment" to prevent the loss of the property ignores this prior history. It also discounts the fact that it would have cost the Saffos much less than $112,516 to have redeemed the property three

years earlier in 2001, because the statutory penalties, which accumulate annually, would not have been nearly so high. See OCGA § 48-4-42 (redemption amount includes "a premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter").

Moreover, as the trial court correctly held, to the extent the Saffos complain of alleged defects in the Sheriff's implementation of the tax sale process, their remedy is a suit against the Sheriff, not a suit against the property's new owner or its manager. As we explained long ago:

> It is sufficient for the purchaser that the sheriff had competent authority to sell, and did sell, and that the defendant in fi. fa. had title to the property sold. The law requiring notice to be given, property advertised, etc., is directory to the officer. His neglect to observe these requirements may subject him to a suit for damages at the instance of any party injured thereby, but will not affect the title of a bona fide purchaser at his sale.

Haden v. Liberty Co., 183 Ga. 209, 211 (188 SE 29) (1936) (citation and punctuation omitted). Thus, "the rule in this state [is] that defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed therefrom void," *GE Capital Mtg. Svcs. v. Clack*, 271 Ga. 82, 83 (515 SE2d 619) (1999) (citing *Sizemore v. Brown*, 179 Ga. App. 594 (347 SE2d 345) (1986)), and we recently reiterated that "any failure to provide the appropriate tax notice would not serve as a basis for nullifying the ultimate

tax sale," *Davis v. Harpagon Co.*, 281 Ga. 250, 252 (637 SE2d 1) (2006). In other words, the Saffos may seek a hearing on the alleged defects in the tax sale in a damages action against the Sheriff, but they clearly have no right to notice followed by a hearing in an effort to set aside the tax deed on those grounds.

Nor have the Saffos otherwise been deprived of an "'opportunity for hearing appropriate to the nature of the case.'" *Jones*, 547 U. S. at 223 (quoting *Mullane*, 339 U. S. at 313). The Saffos do not contend that they can pay the redemption amount. They do not even contend that they could repay Foxworthy what it paid for the property in 2000. Nor do the Saffos challenge, on constitutional or statutory grounds, the individual components of the redemption amount, i.e., the purchase price, the unpaid taxes, costs, and the escalating penalties. As a result, if this case proceeded to trial and the Saffos won, the redemption amount, including the unpaid taxes, would still be due, and presumably the tax sale process would start all over again. What the Saffos seek is not simply an opportunity to be heard before a neutral decision maker, but an opportunity to be heard that will result in the return of their property to them without having to pay for it. OCGA § 48-4-47 does not violate the Saffos' due process rights simply because, in effect, it prevents them and others unwilling or unable to pay or tender the redemption amount from forcing the taxing authority, the new owner, and the trial court to engage in an apparent exercise in futility where, at the end of the day, they will still be in a position where they cannot retain their property. Perhaps because of this logic, although the "pay or tender" obligation of the redemption statute has existed for decades, the Saffos cite no relevant authority to

support their argument that it is unconstitutional, nor have we found any.

"The enforcement and collection of taxes through the sale of the taxpayer's property [can be] a harsh procedure." *Wallace v. President Street, L.P.*, 263 Ga. 239, 240 (430 SE2d 1) (1993) (citation and punctuation omitted). But procedures may be harsh without being unconstitutional. In this case, the Saffos have failed to make out a valid claim that their due process rights have been violated. Accordingly, we reject their due process challenge to the constitutionality of OCGA § 48-4-47.

Judgment affirmed. All the Justices concur.

BENHAM, *Justice*, concurring.

"[T]he enforcement and collection of taxes through the sale of the taxpayer's property has been regarded as a harsh procedure, and, therefore, the policy has been to favor the rights of the property owner in the interpretation of such laws." (Citation and punctuation omitted.) *Wallace v. President Street, L.P.*, 263 Ga. 239 (1) (430 SE2d 1) (1993). While I find the majority's legal analysis to be sound under the current state of the law, I write because I nevertheless believe the result to be harsh and not in keeping with protecting homeowners' rights. Particularly problematic is OCGA § 48-4-47 (a), which requires the homeowner to pay the full redemption price as a condition to maintaining a suit over the validity of the tax sale. This requirement places an onerous burden on persons trying to save their homes. A small tax delinquency can quickly balloon into a substantially greater amount depending on the bid made on the courthouse steps. In this case, even if appellants had moved more quickly to redeem and had reacted before the redemption fee was compounded over time by interest and penalties, under our present non judicial tax sale scheme, which does not allow for any consideration of hardship or ability to pay, appellants still had almost no chance to redeem their property after the tax sale occurred. That seems patently unfair, especially given the current economic environment. I recognize, however, that this is an issue only the legislature may address, and so I reluctantly concur with the judgment.

I am authorized to state that Chief Justice Hunstein joins this concurrence.

Decided November 23, 2009—Reconsideration denied December 15, 2009.

Title to land. Fulton Superior Court. Before Judge Dempsey.

Francis X. Moore, for appellants.

Baker, Donelson, Bearman, Caldwell & Berkowitz, Gary A. Barnes, Ellen M. Taylor, William A. Castings, Jr., Vincent D. Hyman, Janet S. Todd, Thurbert E. Baker, Attorney General, R. O. Lerer, Deputy Attorney General, for appellees.

APPENDIX B

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

[Filed: Oct. 14, 2008]

CIVIL ACTION
FILE NO: 2004cv87901

FORREST J. SAFFO, and SALLIE M. SAFFO,
Plaintiffs,

v.

FOXWORTHY, INC., CHARLES L. WILSON, III.,
and JOHN DOE 1 through JOHN DOE 10,
Defendants.

ORDER

The above-styled matter came before the Court for a hearing on Plaintiffs' Motion for Partial Summary Judgment and Motion to Dismiss Quiet Title Counterclaim, on Defendants' Motion to Dismiss and Motion to Dismiss or, in the Alternative, for a More Definite Statement, and on Defendant Foxworthy, Inc.'s Motion for Summary Judgment.

Having considered the arguments of counsel, and after reviewing the record in its entirety, the Court finds that Plaintiffs did not tender the full redemption amount prior to filing the suit, pursuant to O.C.G.A. § 48-4-47(a). Furthermore, the Court finds that Plaintiffs' right to redeem is now barred. To the extent that Plaintiffs argue that the tax sale must be invalidated because the Sheriff did not comply with

the statutory notice requirements, Plaintiffs' remedy would be as against the Sheriff, rather than the purchasers. *Harper v. Foxworthy*, 254 Ga. App. 495, 498 (2002). The Court notes that, in *Harper*, the court recognized an exception where the purchaser engages in collusion or fraud. *Id.* Here, Plaintiffs have produced no evidence of such behavior on the part of Defendants.

Accordingly, Plaintiffs' Motions are HEREBY DENIED and Defendants' Motions, including Foxworthy's Motion for Summary Judgment, are HEREBY GRANTED. It is FURTHER ORDERED that Plaintiffs' Complaint is HEREBY DISMISSED. In accordance with the Order entered on February 25, 2008, Defendant Foxworthy, Inc.'s Counterclaims are referred to Janet Smalley Todd as Special Master.

SO ORDERED this the 14 day of October, 2008.

/s/ ALFORD J. DEMPSEY
ALFORD J. DEMPSEY, JR., JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

APPENDIX C

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

[Filed May 27, 2008]

CIVIL ACTION
FILE NO: 2004cv87901

FORREST J. SAFFO, and SALLIE M. SAFFO,
Plaintiffs,

v.

FOXWORTHY, INC., CHARLES L. WILSON, III.,
and JOHN DOE 1 through JOHN DOE 10,
Defendants.

ORDER OVERRULING PLAINTIFFS' OBJECTIONS TO JURISDICTION OF SPECIAL MASTER

Having considered the Plaintiffs' Objections to the Jurisdiction of the Special Master, along with responsive pleadings and all relevant matters of record, the Court hereby OVERRULES the objections and deems this case suitable for resolution by the appointed Special Master.

However, in light of the Plaintiffs' concerns regarding fees, the Court will decide the currently pending motions rather than refer them to the Special Master. Hearing dates for the pending motions shall be set by separate order of the Court.

SO ORDERED this the 23 day of May, 2008.

/s/ ALFORD J. DEMPSEY, JR.,
ALFORD J. DEMPSEY, JR., JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

APPENDIX D

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

[Filed Feb. 25, 2008]

CIVIL ACTION
FILE NO: 2004cv87901

FORREST J. SAFFO, and SALLIE M. SAFFO,
Plaintiffs,

v.

FOXWORTHY, INC., CHARLES L. WILSON, III.,
and JOHN DOE 1 through JOHN DOE 10,
Defendants.

ORDER DENYING PLAINTIFFS' MOTION TO VACATE ORDER APPOINTING SPECIAL MASTER

Having considered the Plaintiff s Motion to Vacate Order Appointing Special Master, along with responsive pleadings and all relevant matters of record, the Court hereby DENIES said motion, and refers this matter to Janet Smalley Todd as Special Master. The parties shall confer with the Special Master to determine what matters, if any, in the instant case are beyond the scope of the statutory authority of a Special Master and will require the Court's direct attention to adjudicate. The parties and Special Master shall inform the Court of the status of the instant case either by appearing at the Court's April 11, 2008 status calendar, notice of which will issue contemporaneously with this Order, or by filing a joint status report on or before April 7, 2008 with the Clerk of the Superior Court.

SO ORDERED this the 1st day of February, 2008.

/s/ ALFORD J. DEMPSEY, JR.,
ALFORD J. DEMPSEY, JR., JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

APPENDIX E

STATE OF GEORGIA'S STATUTORY SCHEME

REAL PROPERTY AD VALOREM TAX ASSESSMENT AND COLLECTION & SHERIFF DUTIES

1. TAX COLLECTION AND EXECUTIONS - GENERALLY

O.C.G.A. § 48-5-1

The intent and purpose of the tax laws of this state are to have all property and subjects of taxation returned at the value which would be realized from the cash sale, but not the forced sale, of the property and subjects as such property and subjects are usually sold except as otherwise provided in this chapter.

O.C.G.A. § 48-5-3

All real property including, but not limited to, leaseholds, interests less than fee, and all personal property shall be liable to taxation and shall be taxed, except as otherwise provided by law. Liability of property for taxation shall not be affected by the individual or corporate character of the property owner or by the resident or nonresident status of the property owner.

O.C.G.A. § 48-5-10

All property shall be returned by the taxpayers for taxation to the tax commissioner or tax receiver as provided by law. Each return by a taxpayer shall be for property held and subject to taxation on January 1 next preceding each return.

O.C.G.A. § 48-3-3(a)

The tax collector or tax commissioner shall issue executions for nonpayment of taxes collectable by him at any time after 30 days have elapsed since giving notice as provided in subsection (b) of this Code section [§ 48-3-3(b)]. The executions shall be directed to all and singular sheriffs and constables of the state. (Emphasis added.)

O.C.G.A. § 48-3-1

The commissioner may issue an execution for the collection of any tax... due the state. The execution shall be directed to all and singular sheriffs of this state... and shall command them to levy upon the goods, chattels, lands, and tenements of the taxpayer.... Each sheriff shall execute the execution as in cases of writs of execution from the superior courts. (Emphasis added.)

O.C.G.A. § 48-5-127

(a) It shall be the duty of the tax collector to: (1) Collect diligently and pay promptly the funds allowed the state by law and the county taxes to the commissioner and the county treasurer, respectively . . .; (6) issue executions as provided by law for all taxes due the state or any county remaining unpaid after the time provided by law for payment. . ..

O.C.G.A. § 48-5-9

Taxes charged against whom. Taxes shall be charged against the owner of property if the owner is known and against the specific property itself if the owner is not known. Life tenants and those who own and enjoy the property shall be chargeable with the taxes on the property.

O.C.G.A. § 48-2-55

Taxes made personal debt; attachment and garnishment; levy. (a) All taxes are a personal debt of the person required by this title to file the returns or to pay the taxes imposed by this title.

O.C.G.A. § 48-2-56(a)

Except as otherwise provided in this Code section, liens for all taxes due the state or any county or municipality in the state shall arise as of the time the taxes become due and unpaid and all tax liens shall cover all property in which the taxpayer has any interest from the date the lien arises until such taxes are paid.

O.C.G.A. § 48-2-56(b)

Except as otherwise provided in this Code section, liens for taxes are superior to all other liens and shall be paid before any other debt, lien, or claim of any kind.

O.C.G.A. § 48-2-56(d)(1)

Liens for any ad valorem taxes shall cover the property of taxpayers liable to tax from the time fixed by law for valuation of the property in each year until such taxes are paid and shall cover the property of tax collectors or tax commissioners and their sureties from the time of giving bond until all the taxes for which they are responsible are paid. (Emphasis added)

O.C.G.A. § 48-2-56(d)(2)

The lien for any ad valorem tax shall not be superior to the title and operation of a security deed when the tax represents an assessment upon property of the

taxpayer other than property specifically covered by the title and operation of the security deed.

O.C.G.A. § 48-2-56(d)(3)

When real property located within this state is transferred between the date on which any ad valorem tax lien on the property vests and the date on which the tax evidenced by the tax lien becomes due and payable, the ad valorem tax lien on the transferred property shall not extend to cover any other real property of the transferor.

O.C.G.A. § 48-2-55(b)(1)

The commissioner or his authorized representative may attach the property of a delinquent taxpayer on any ground provided by Code Section 18-3-1 or on the ground that the taxpayer is liquidating his property in an effort to avoid payment of the tax. (Emphasis added)

O.C.G.A. § 48-2-55(b)(2)

Garnishment may be issued by the commissioner or his authorized representative against any person whom he believes to be indebted to the defendant or who has property, money, or effects in his hands belonging to the defendant. (Emphasis added)

O.C.G.A. § 48-2-55(c)(1)

The commissioner or his authorized representative may levy upon all property and rights to property belonging to the taxpayer, except such as are exempt by law, for the payment of the amount due, together with interest on the amount, any penalty for nonpayment, and such further amount as shall be sufficient for the fees, costs, and expenses of the levy. As used in this subsection, the term "property and rights to

property" includes, but is not limited to, any account in or with a financial institution.

O.C.G.A. § 48-2-55(d)

The commissioner or his authorized representative may levy and conduct judicial sales in the manner provided by law for sales by sheriffs and constables. [See, O.C.G.A. § 9-13-140]

O.C.G.A. § 48-3-6

Executions may be levied by the officers to whom such executions are directed or by other officers who are authorized by law to act in their place.

O.C.G.A. § 46-4-3

The constable or other levying officer to whom the tax collector or tax commissioner delivers the tax executions for collection shall proceed promptly to enforce by levy and sale the collection of the executions.

2. TAX EXECUTIONS - LEVY, NOTICES AND SALE

O.C.G.A. § 9-13-12

The officer making the levy shall enter the same on the process by virtue of which levy is made and in the entry shall plainly describe the property levied on and the amount of the interest of defendant therein.

O.C.G.A. § 48-4-1

Except as otherwise provided in this title, when a levy is made upon real or personal property, the property shall be advertised and sold in the same manner as provided for executions and judicial sales. Except as otherwise provided in this title, the sale of real or personal property under a tax execution shall

be made in the same manner as provided for judicial sales; provided, however, that in addition to such other notice as may be required by law, in any sale under a tax execution made pursuant to this chapter, the defendant shall be given ten days' written notice of such sale by registered or certified mail or statutory overnight delivery. The notice required by this Code section shall be sent:

(1) In cases of executions issued by a county officer for ad valorem taxes, to the defendant's last known address as listed in the records of the tax commissioner of the county that issued the tax execution; or

(2) In cases of executions issued by a state officer, to the defendant's last known address as listed in the records of the department headed by the issuing officer.

3. POST-SALE REDEMPTION

O.C.G.A. § 48-4-40

Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or any person having any right, title, or interest in or lien upon such property may redeem the property from the sale by the payment of the redemption price or the amount required for redemption, as fixed and provided in Code Section 48-4-42:

(1) At any time within 12 months from the date of the sale; and

(2) At any time after the sale until the right to redeem is foreclosed by the giving of the notice provided for in Code Section 48-4-45.

O.C.G.A. § 48-4-42

(Applicable to tax sales prior to July 2, 2002)

The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter, or the redemption price, shall be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus any taxes paid on the property by the purchaser after the sale for taxes, plus any special assessments on the property, plus a premium of 20 percent of the amount for each year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made. If redemption is not made until after the required notice has been given, there shall be added to the redemption price the sheriff's cost in connection with serving the notice, the cost of publication of the notice, if any, and the further sum of 20 percent of the amount paid for the property at the sale to cover the cost of making the necessary examinations to determine the persons upon whom notice should be served. All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

O.C.G.A. § 48-4-42

(Applicable to tax sales after July 1, 2002)

The amount required to be paid for redemption of property from any sale for taxes as provided in this chapter, or the redemption price, shall with respect to any sale made after July 1, 2002, be the amount paid for the property at the tax sale, as shown by the recitals in the tax deed, plus any taxes paid on the property by the purchaser after the sale for taxes, plus any special assessments on the property, plus a

premium of 20 percent of the amount for the first year or fraction of a year which has elapsed between the date of the sale and the date on which the redemption payment is made and 10 percent for each year or fraction of a year thereafter. If redemption is not made until more than 30 days after the notice provided for in Code Section 48-4-45 has been given, there shall be added to the redemption price the sheriff's cost in connection with serving the notice and the cost of publication of the notice, if any. All of the amounts required to be paid by this Code section shall be paid in lawful money of the United States to the purchaser at the tax sale or to the purchaser's successors.

O.C.G.A. § 48-4-44

(a) In all cases where property is redeemed, the purchaser at the tax sale shall make a quitclaim deed to the defendant in fi. fa., which deed shall recite:

(1) The name of the person who has paid the redemption money; and

(2) The capacity in which or the claim of right or interest pursuant to which the redemption money was paid.

(b) The recitals required by this Code section shall be prima-facie evidence of the facts stated.

4. POST-SALE - BARMENT OF RIGHT OF REDEMPTION

O.C.G.A. § 48-4-45

(a) After 12 months from the date of a tax sale, the purchaser at the sale or his heirs, successors, or assigns may terminate, foreclose, divest, and

forever bar the right to redeem the property from the sale by causing a notice or notices of the foreclosure, as provided for in this article:

(1) To be served upon all of the following persons who reside in the county in which the property is located:

(A) The defendant in the execution under or by virtue of which the sale was held;

(B) The occupant, if any, of the property; and

(C) All persons having of record in the county in which the land is located any right, title, or interest in, or lien upon the property;

(2) To be sent by registered or certified mail or statutory overnight delivery to each of the persons specified in subparagraphs (A), (B), and (C) of paragraph (1) of this subsection who resides outside the county in which the property is located, if the address of that person is reasonably ascertainable; and

(3) To be published, if that tax sale occurs on or after July 1, 1989, in the newspaper in which the sheriff's advertisements for the county are published in each county in which that property is located, which publication shall occur once a week for four consecutive weeks in the six-month period immediately prior to the week of the redemption deadline date specified in the notice.

(b) Nothing contained in this Code section shall be construed to require that any notice be sent to or served upon any person whose right, title, interest in, or lien upon the property does not

appear of record in the county in which the land is located.

(c) The heirs of any deceased owner of any land entitled to notice pursuant to this Code section shall be served by the sheriff or notified as provided in this article.

O.C.G.A. § 48-4-46

(b) The purchaser at the tax sale or his heirs, successors, or assigns, as the case may be, shall make out an original notice in substantially the form prescribed in subsection (a) of this Code section and one copy of the notice for each person to be served with the notice. The purchaser shall deliver the notice and the copies together with a list of the persons to be served to the sheriff of the county in which the land is located not less than 45 days before the date set in each notice for the expiration of the right to redeem. Within 15 days after delivery to him, the sheriff shall serve a copy of the notice personally or by deputy upon each of the persons included on the list furnished him who reside in the county. The sheriff shall make an entry of the service on the original copy of the notice. Leaving a copy of the notice at the residence of any person required to be served with the notice shall be a sufficient service of the notice.

. . .

(d) Each original notice together with the entry of the sheriff on the notice shall be returned to the person by whom the service was requested upon the payment of the sheriff's costs as provided by law. Any original notice together with the entries on the notice may be filed and

recorded on the deed records in the office of the clerk of the superior court of the county in which the land is located.

5. CONDITION PRECEDENT TO CHALLENGING TAX SALE

O.C.G.A. § 48-4-47

(a) After notice to foreclose the right of redemption as provided for in this article has been given, no action shall be filed, allowed, sanctioned, or maintained for the purpose of setting aside, canceling, or in any way invalidating the tax deed referred to in the notice or the title conveyed by the tax deed unless and until the plaintiff in the action pays or legally tenders to the grantee in the deed or to his successors the full amount of the redemption price for the property, as provided for in this article.

(b) Subsection (a) of this Code section shall apply unless it clearly appears that:

(1) The tax or special assessment for the collection of which the execution under or by virtue of which the sale was held was not due at the time of the sale; or

(2) Service or notice was not given as required in this article. (Emphasis added)

6. SHERIFF'S OATHS, BONDING & TAX SALE DUTIES

O.C.G.A. § 15-13-14

If any sheriff or other officer fails to make a proper return of all writs, executions, and other processes put into his hands or fails to pay over all moneys

received on such executions on his being required to do so by the court, he shall be liable for contempt and may be fined, imprisoned, or removed from office in the manner prescribed by the Constitution and laws of this state.

O.C.G.A. § 15-16-4

Before entering on the duties of their office the sheriffs shall take and subscribe, in addition to the oath required of all civil officers, the following oath before the judge of the superior court or the judge of the probate court:

> 'I do swear that I will faithfully execute all writs, warrants, precepts, and processes directed to me as sheriff of this county, or which are directed to all sheriffs of this state, or to any other sheriff specially, which I can lawfully execute, and true returns make, and in all things well and truly, without malice or partiality, perform the duties of the office of sheriff of _____ County, during my continuance therein, and take only my lawful fees. So help me God.'

O.C.G.A. § 15-16-5

The sheriffs shall give a bond in the sum of $25,000.00, which amount may be increased in any county by local Act, conditioned for the faithful accounting for all public and other funds or property coming into the sheriffs' or their deputies' custody, control, care, or possession

O.C.G.A. § 15-16-10(a)(5)

(a) It is the duty of the sheriff:

(5) To keep an execution docket wherein he must enter a full description of all executions delivered to him and the dates of their delivery, together with all his actions thereon, and to have the same ready for use in any court of his county.

O.C.G.A. § 15-16-18

No sheriff or deputy or other officer discharging a similar duty shall be permitted to purchase any property whatever at his own sale, either upon his own bid or upon the bid of any other person for him, directly or indirectly. All such sales and deeds in pursuance thereto, intended to vest in such officer the title to the property so purchased, shall be null and void.

O.C.G.A. § 15-16-23

Sheriffs are authorized in their discretion to appoint one or more deputies. Each deputy shall be required to execute a bond with a surety in the amount of $5,000.00 payable to the sheriff and conditioned upon the faithful accounting for all public and other funds or property coming into the deputy's custody, control, care, or possession

O.C.G.A. § 44-5-30

A deed to lands must be in writing, signed by the maker, and attested by at least two witnesses. It must be delivered to the purchaser or his representative and be made on a good or valuable consideration. The consideration of a deed may always be inquired into when the principles of justice require it.

O.C.G.A. § 45-3-7

Before proceeding to act, all deputies shall take the same oaths as their principals take and the oaths shall be filed and entered on the minutes of the same office with the same endorsement thereon; but this Code section shall not apply to any deputy who may be employed in particular cases only. A deputy sheriff may take his oaths before the sheriff and the oaths may be filed in and entered in the records of the sheriff's office.